

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN TENNISON,

No. C-04-0574 CW (EMC)

Plaintiff,

v.

**ORDER TO SHOW CAUSE PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 11**

CITY & COUNTY OF SAN FRANCISCO, *et al.*,

Defendants.

_____ /

Defendants Napoleon Hendrix and Prentice Earl Sanders filed a motion for civil contempt against third party Luther T. Blue, which was heard on July 27, 2005. In their motion, Defendants claimed that Mr. Blue improperly invoked his right against self-incrimination at his deposition and that, even if the privilege had been properly invoked, the privilege had been waived based on Mr. Blue's prior interviews with the police in 1990 and a prior declaration signed in 2000, all taking place well before this lawsuit was initiated in 2004. Defendants maintained this position in spite of well-established authority that "a waiver of the Fifth Amendment privilege is limited to the particular proceeding in which the waiver occurs." *United States v. Licavoli*, 604 F.2d 613, 623 (9th Cir. 1979); *see also In re Neff*, 206 F.2d 149, 152 (3d Cir. 1953) (noting that "a person who has waived his privilege of silence in one trial or proceeding is not estopped to assert it as to the same matter in a subsequent trial or proceeding"; "privilege attaches to the witness in each particular case in which he may be called on to testify, and whether or not he may claim it is to be determined without reference to what he said when testifying as a witness on some other trial, or on a former trial of the same case, and without reference to his declarations at some other time or place").

1 In light of the well-established authority, including but not limited to the cases cited above,
2 the Court hereby orders Defendants to show cause why they have not violated Federal Rule of Civil
3 Procedure 11(b) by signing, filing, submitting, and advocating a motion arguing for a waiver of the
4 Fifth Amendment privilege. *See* Fed. R. Civ. P. 11(b)(1) (discussing certification by attorney that, to
5 the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under
6 the circumstances, the legal contentions therein are warranted by existing law or by a nonfrivolous
7 argument for the extension, modification, or reversal of existing law or the establishment of new
8 law).

9 Defendants shall file a response to this order to show cause within two weeks of the filing of
10 this order.

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12 IT IS SO ORDERED.

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14 Dated: July 27, 2005



EDWARD M. CHEN
United States Magistrate Judge